On the evidence, the second defendants were carrying on the business of a futures broker in Singapore without a licence, through the first defendants. Accordingly, the contracts which they had put through for TCK in Singapore were all illegal and all moneys due thereunder were irrecoverable.

With respect to the issue of the recoverability of the shares, counsel for the plaintiff submitted that the shares were recoverable as the plaintiff did not know that TCK's transactions were illegal. Counsel for the defendants merely contended that leave to defend on this issue should be given. Neither counsel cited any authority.

In my view, the shares were recoverable on a number of grounds. Firstly, the plaintiff, assuming he had consented to the shares being used by TCK as security for his futures dealings with the second defendants, was in the position of a guarantor of the liabilities of TCK to the second defendants to the extent of the values of the shares. The consideration for the security was that the second defendants would carry out the buying and selling orders of TCK. This must imply the carrying out of *lawful* and not *unlawful* orders unless the plaintiff had agreed or accepted otherwise. There was no evidence or any allegation of fact before me that the plaintiff was aware that the transactions when entered into would be illegal or that TCK would be entering into illegal contracts with the second defendants. Accordingly, there was no consideration for the plaintiff's security and the shares must be returned to him.

Secondly, one of the objects of the Act is to protect that class of the public who trade in futures. As there was no allegation that the plaintiff was in pari delicto, he was also entitled to recover the shares on this ground: *Kiriri Cotton Co Ltd* v *Dewani*.[6]

Thirdly, the statutory definition of 'futures broker' includes a person who, in connection with the carrying on of his business of futures trading, accepts securities to margin, guarantee or secure any trades or contracts that may result therefrom. In my view, this definition has the effect of prohibiting an unlicensed broker from taking securities in connection with the soliciting or acceptance of orders for the buying or selling of futures. Accordingly, even if a security interest in the shares could pass to the second defendants, a point which I need not decide, they were not entitled to retain the shares.

For the above reasons, the appeal of the defendants was dismissed with costs.

Appeal dismissed.

Solicitors: *Rajah & Tann; Allen & Gledhill.*

Reported by *S Surenthiraraj*

Re Tang King Kai

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 155 OF 1988
CHAO HICK TIN J
5 FEBRUARY 1991

Legal Profession — Disciplinary proceedings — Disciplinary committee's determination under s 90 of Legal Profession Act (Cap 161, 1985 Ed) — Whether specific words spelt out in s 90 should be used

Administrative Law — Disciplinary committee under Legal Profession Act (Cap 161, 1985 Ed) — Chairman passing away after report submitted — Whether disciplinary committee, without the chairman, can reconvene and make report in proper terms — Whether disciplinary committee can be reconstituted by appointment of new chairman

On 1 April 1987, a disciplinary committee was appointed ('the Committee') under the Legal Profession Act ('the Act') to hear and investigate four charges against one Tang King Kai ('TKK'). The Committee found that in respect of the first and fourth charges that TKK should be reprimanded under s 90(1)(b) of the Act. In respect of the second charge, the Committee found that the negligence of TKK amounted to 'grossly improper conduct in the discharge of his profession and duty within the meaning of s 80(2)(b)'. In respect of the third charge, the Committee found that 'TKK's conduct comes within s 80(2)(b) of the Act and he should be dealt with accordingly'.

Under s 90(1) a disciplinary committee is required to determine whether there was cause of sufficient gravity for disciplinary action under s 80 and if not, whether a solicitor should be reprimanded. Following this, the Law Society applied for and obtained an order that TKK should show cause as to why he should not be dealt with under s 80 of the Act. In this application, the Law Society applied for an order, inter alia, to stay the previous order.

The issue was whether the findings of the Committee in respect of the second and third charges amounted to a finding that there was cause of sufficient gravity for disciplinary action under s 80 of the Act. The issues argued before the court were therefore as follows:

(1) Must there be an express reference in the report in terms of the wording of s 90(1)(c) before a matter may be proceeded with further under s 80 of the Act?
(2) If so, could the Committee reconvene and make a report in the proper terms in spite of the fact that the chairman of the committee had passed away?
(3) If the answer to (2) is in the negative, could the Committee be reconstituted by appointment of a new chairman who, together with existing members, proceed to make a report in the proper terms?

Held, dismissing the application:

(1) A disciplinary committee has a duty to make the appropriate determination under s 90(1) of the Act. A proper determination may be made even if the specific words spelt out in s 90(1)(c) were not used, as long as the meaning of the Committee's determination is clear.

(2) In relation to the second charge, the fact that the Committee found TKK guilty of grossly improper conduct within the meaning of s 80(2)(b) must necessarily mean that the matter is of a gravity that warrants the striking off the roll

or suspension from practice or censure under s 80(1). It was clear that the Committee intended that the complaint was of sufficient gravity to proceed under s 80 and that a reprimand would not do. Even if the Committee had intended that the grossly improper conduct was not of sufficient gravity to proceed under s 80 and that a reprimand would do, the Committee would have so pronounced as it did in relation to the first and fourth charges.

(3) In respect of the third charge the words '... and he should be dealt with accordingly' in the committee's report made it clear that the Committee has decided that TKK should be dealt with under s 80.

(4) The object of Part 7 of the Act is to provide a fair system to discipline errant solicitors and ensure that they are dealt with appropriately in the interest of the public. A fair construction should be given to these provisions instead of a purely technical one.

(5) There would be no necessity, therefore, to examine the second and third issues argued before the court. However, if the issues were to be decided then it would not be in order for the three remaining members of the Committee to reconvene and carry on where it left off and submit a report afresh or a supplementary report since the three-member committee minus the chairman is not a committee within the meaning of the Act. A new chairman would have to be appointed and there would have to be a complete rehearing with new members of the disciplinary committee.

Cases referred to

1 *Re Linus Joseph* [1990] 3 MLJ 392 (folld)
2 *Re Roy and College of Nurses of Ontario* 107 DLR (3rd Ed) 437 (distd)
3 *Marsland* v *Taggart* [1928] 2 KB 447 (distd)
4 *Ng* v *R* [1987] 1 WLR 1356 (refd)
5 *Tan Boon Chee* v *Medical Council of Singapore* [1980] 2 MLJ 116 (refd)
6 *R* v *Huntingdon Confirming Authority* [1929] 1 KB 698 (refd)
7 *Munday* v *Munday* [1954] 2 All ER 667 (refd)
8 *R* v *Kent Police Authority, ex p Godden* [1971] 2 QB 662 (refd)

Legislation referred to

Legal Profession Act (Cap 161, 1985 Ed) ss 80, 87, 90, 91, 94

Michael Khoo for the Law Society.
Gavin Lightman QC (*Cheong Yuen Hee* with him) for the respondent.

Cur Adv Vult

Chao Hick Tin J: On 1 April 1987 a disciplinary committee ('the Committee') under the chairmanship of Mr Justice T Kulasekaram (retired), now deceased, was appointed by the Chief Justice under the Legal Profession Act (Cap 161, 1985 Ed) ('the Act') to hear and investigate four charges against one Tang King Kai ('TKK'), an advocate and solicitor, following complaints made by two advocates and solicitors. The same Committee was also appointed to hear two charges each against two other solicitors, which also arose from the same complaints.

After a hearing which stretched over several days, the Committee submitted its report on 19 December 1987. In the report, the Committee made the following findings and determinations in respect of the four charges against TKK:

Charge 1

Bearing in mind the high degree of proof required in these cases, the Committee feels that the Society has only established a clear case of negligence on the part of TKK in holding out PT as a partner since 1981 and not that he had wilfully acted in breach. The Committee is *not satisfied* that from the facts there *is a case of sufficient gravity* within the meaning of s 80(2)(b) in respect of this charge, but nevertheless determined that TKK should be reprimanded for the same under s 90(1)(b) of the Act. (Emphasis added.)

Charge 2

The Committee finds that there was negligence shown on the part of TKK in failing to ensure that the undertaking given to SLB was honoured. This negligence was so culpable as to amount to grossly improper conduct in the discharge of his profession and duty within the meaning of s 80(2)(b). (See *Re Francis Seow* [1973] 1 MLJ 199.)

Charge 3

The Committee finds that the failure to inform SLB of the sale of No 70 Greenwood Ave by TKK was deliberate and with foresight of its consequences even though by that act of omission he enjoyed no pecuniary advantage. In the light of the undertaking given by his firm on 15 April 1985, there was a duty on his part to so inform. He failed to discharge that duty promptly or at all.

The test of what constitutes grossly improper conduct in the discharge of his professional duties has been laid down by the cases to mean conduct which is dishonourable to the solicitor as a man and dishonourable in his profession. (See *Re David Marshall* [1972] 2 MLJ 221.) Applying this test, the Committee is of the view that TKK's conduct comes within s 80(2)(b) of the Act and he should be dealt with accordingly.

Charge 4

Although TKK ought to have been aware that PT had no practising certificate from 1981 to 1986 the Law Society has not been able to prove that TKK had acted knowingly and wilfully against the Legal Profession Act in this case. The Committee would also apply the same reasoning in the first charge against TKK in DC/SEC/3/87 and determine that the ends of justice would be met by administering a reprimand to him in respect of this charge under s 90(1)(b) of the Act.

Following the receipt of the report of the Committee and pursuant to s 91 of the Act, the Law Society applied ex parte in this originating summons for an order that TKK should show cause why he should not be dealt with under the provisions of s 80 of the Act. An order in terms was granted by the then Chief Justice on 7 March 1988.

On 13 May 1988 the Law Society of Singapore applied by way of a summons-in-chambers (ex parte) in this originating summons, for the following orders:

(1) the order of court made on 7 March 1988 in terms of this originating summons be stayed until further order;
(2) the Committee appointed, heard and investigated into the complaints against Tang King Kai do make its determination in accordance with s 90(1) and (2) of the Act;
(3) in respect of such determination the appointment of the chairman of the committee, the late Mr Justice T Kulasekaram be revoked and that the vacancy created by such revocation be filled by another member to be appointed under s 87(3) of the Act;
(4) the six-month period within which the committee is required to make its findings and determination under s 90(3) of the Act be extended to a further period of six months from the date of the making of the order hereon.

In an affidavit deposed to by one Mr Chim How Yan on behalf of the Law Society and filed in support of the application, it was stated that the order made on 7 March 1988 had not yet been perfected and neither had it been served on TKK, the respondent. Mr Chim further stated that it had come to his knowledge that the Committee had not in its report 'determined on two of the charges, which of the provisions under s 90(1) of the Legal Profession Act on which the said Tang King Kai should be dealt with'. The affidavit went on to say that the chairman of the Committee had, since the submission of the report, passed away.

When the ex parte summons-in-chambers came up before the then Chief Justice, he adjourned the matter and directed that the papers be served on TKK, the respondent. That is the application now before me.

Mr Michael Khoo who appeared for the Law Society conceded that in the report of the Committee there was no *express* determination by the Committee in the language of alternative (c) to s 90(1) of the Act in respect of the second and the third charges. The following are the issues identified and argued upon before me by both counsel:

(i) must there be an express reference in the report in the terms of the wording of s 90(1)(c) of the Act before a matter may be proceeded with further against an advocate and solicitor under s 80 of the Act;
(ii) if the answer to the first issue is in the affirmative, and bearing in mind the findings of the Committee, could the Committee (minus the chairman who has since deceased) reconvene and make a report in the proper terms;
(iii) if the answer to (ii) is in the negative, could the Committee be re-constituted by the appointment of a new chairman who will then, together with the three existing members, proceed to make a report in the proper terms.

Before I proceed to examine the issues I think it is necessary that I should first set out the relevant provisions of the Act. I must however explain that a new edition of the Act was published in 1990. The numbering of the sections has changed. However, for convenience and to avoid confusion, I will nevertheless stick to the previous numbering:

80(1) All advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown to be struck off the roll or suspended from practice for any period not exceeding two years or censured.

(2) Such due cause may be shown by proof that an advocate and solicitor —

(b) has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or guilty of such a breach of any usage or rule of conduct made by the Council under the provisions of this Act as in the opinion of the Court amounts to improper conduct or practice as an advocate and solicitor.

90(1) After hearing and investigating any matter referred to it, a Disciplinary Committee shall record its findings in relation to the facts of the case and according to those facts shall determine —

(a) that no cause of sufficient gravity for disciplinary action exists under section 80;
(b) that while no cause of sufficient gravity for disciplinary action exists under that section the advocate and solicitor should be reprimanded; or
(c) that cause of sufficient gravity for disciplinary action exists under the section.

(4) The findings and determination of the Disciplinary Committee under this section shall be drawn up in the form of a report ...

91(1) If the determination of the Disciplinary Committee under section 90 is that cause of sufficient gravity for disciplinary action exists under section 80 the Society shall without further direction or directions proceed to make an application in accordance with section 95.

(2) If the determination of the Disciplinary Committee under section 90 is that no cause of sufficient gravity for disciplinary action exists under section 80, it shall not be necessary for the Society to take any further action in the matter unless so directed by the court.

95(1) An application that a solicitor be struck off the roll or suspended from practice or censured or that he be required to answer allegations contained in an affidavit shall be made by originating summons ex parte for an order calling upon the solicitor to show cause.

First issue

Under s 90(1) a disciplinary committee is required, in the light of its findings on the facts in relation to each

matter, to decide which of the three alternative determinations it would make. Firstly, it could decide that there is no cause of sufficient gravity for the matter to proceed under s 80; second, that there is no sufficient cause to proceed under s 80, but it feels that the advocate and solicitor should be reprimanded; third, that cause of sufficient gravity for disciplinary action exists under s 80.

The arguments of Mr Lightman may be summarized as follows. In relation to the second and third charges, the Committee did not expressly state that 'cause of sufficient gravity for disciplinary action exists under (s 80)'. That being the case, it follows that no determination was made by the Committee. What is given to the Committee under s 90(1) is not so much a power but a duty; a duty to make one of the three determinations set out in that provision: see *Re Linus Joseph*[1] at p 395. He said that without a proper determination as required under s 90(1) no further steps may be taken against a solicitor, not even by a complainant pursuant to s 94(1). Mr Lightman also emphasized that while the report of the Committee referred to grossly improper conduct on the part of TKK, it did not necessarily follow that the Committee had decided that cause of sufficient gravity existed under s 80 and that the solicitor must therefore be dealt with under that section. He could very well be dealt with under s 90(1)(b) instead of s 90(1)(c). Mr Lightman submitted that the court should not readily find that there was an implied determination under s 90(1)(c).

I accept that under s 90(1) a disciplinary committee has a duty to make the appropriate determination. The court of three judges had clearly so stated in *Re Linus Joseph*[1] (at p 395):

> The disciplinary committee's determination under s 90 of the Act is a duty it must discharge and not merely a power which it may exercise.

However, the question is, does it follow that there could only be a proper determination within s 90(1)(c) if the very specific words spelt out in that provision are used? Take a situation under s 90(1)(a). If a disciplinary committee were to hold that the complaint was dismissed and say nothing more, does it mean that there is nevertheless no determination because the specific words are not used? Does it mean that the committee must be asked to reconvene to put matters right or worse still a new committee be appointed to hear the case all over again (quite apart from the question of double jeopardy)? If the answer to each of these two questions is 'no', and I think it must be 'no', then the same reasoning must apply in deciding whether the Committee has made a determination under s 90(1)(c). I do not think it matters how the Committee has worded the determination so long as its meaning is clear.

We come now to the next question, is it abundantly clear from the report that the Committee has determined in relation to the second and the third charges that 'cause of sufficient gravity for disciplinary action exists under that section'; 'that section' refers to s 80. The determination of the Committee on the second charge is as follows:

> this negligence was so culpable as to amount to grossly improper conduct in the discharge of his profession and duty within the meaning of s 80(2)(b).

As I have stated above, Mr Lightman has argued that it does not follow that just because the Committee has determined that TKK was guilty of grossly improper conduct within the meaning of s 80(2)(b), that it has also determined that disciplinary action should be taken against TKK under that section. He contended that it is entirely possible and consistent for the Committee to determine that the case be proceeded with under s 90(1)(b).

I am unable to accept this argument for two reasons. First, the fact that the Committee has found TKK guilty of *grossly* improper conduct within the meaning of s 80(2)(b) must necessarily mean that the matter is not a trivial one but is of a gravity which warrants, in accordance with s 80(1), the striking off the roll or suspension from practice not exceeding two years or a censure. With respect, I think it defies logic and good sense to say that notwithstanding what it has held, the Committee could have intended that the complaint is not of sufficient gravity to proceed under s 80 and that a reprimand would do. It would have been different if the Committee had merely held that TKK was guilty of improper conduct and said nothing more. It seems to me clear that proof of each of the act or misconduct set out in s 80(2)(a)(i) and (k) is ipso facto cause of sufficient gravity for disciplinary action to be taken under the same section. Secondly, if the Committee had intended (notwithstanding the illogicality pointed out above) to hold that the grossly improper conduct was not of sufficient gravity to proceed under s 80 and that the solicitor should only be reprimanded, it would have so pronounced, as it did in relation to the first and the fourth charges. I would point out that it did specifically say in relation to the first charge that it was not satisfied that 'there (was) a case of sufficient gravity within the meaning of s 80(2)(b)'. In my view, there is really no room for conjecturing that the Committee has not decided that disciplinary action under s 80 should be proceeded against TKK on that charge.

Turning to the third charge, the determination of the Committee is even clearer and it is as follows:

> The test of what constitutes grossly improper conduct in the discharge of his professional duties has been laid down by the cases to mean conduct which is dishonourable to the solicitor as a man and dishonourable in his profession ...

> Applying this test the Committee is of the view that TKK's conduct comes within s 80(2)(b) of the Act *and he should be dealt with accordingly*. (Emphasis added.)

With the additional words at the end of the paragraph, it is clear beyond a shadow of a doubt that the Committee has decided that TKK should be dealt with under s 80.

The reference in both these two determinations to s 80(2)(b) is most significant. While I agree that s 90(1) imposes a duty on the Committee, that in no way means that the Committee must repeat the very words of the provision and any failure so to do would render the determination no determination. In my opinion that would be stretching technicality to the extreme and placing too much importance on form rather than substance. After all, what is the object of Part VII of the Act? It is to provide for a fair system to discipline errant solicitors. It is not just a system to protect solicitors, as argued by the respondent's counsel, but also a system to ensure that errant solicitors are appropriately dealt with in the interest of the public. I think a fair construction should be given to those provisions rather than a purely technical one. Like all statutory provisions, they should be reasonably construed.

Mr Lightman referred me to the Canadian case *Re Roy and College of Nurses of Ontario*.[2] That case concerned s 85 of the Canadian Health Disciplines Act 1974, and the power of the relevant authority to suspend the certificate of competence of a nurse. Under that provision a nurse could only be suspended or the case be referred to the registration committee after a board of inquiry had submitted its report to the executive committee. No board of inquiry was appointed to look into the complaint and there was no report. Reid J (of the Ontario High Court) held that this must be done before any hearing or suspension could be ordered. He said that 'this is a valuable safeguard for a member against hasty or arbitrary action. I cannot regard it as a mere formality.' The court refused to read 'board of inquiry report' to mean 'or complaints committee report'.

I do not think our case here is anywhere near to that in *Re Roy and College of Nurses*[2] where an essential prerequisite under the law, a board of inquiry report, was missing altogether.

Second and third issues

In the light of my opinion above, there is really no need for me to go into the second and the third issues. However, as arguments have been submitted to me on those issues, I shall briefly indicate my views thereon. Mr Lightman has said that he would not be taking any points based on functus officio or autrefois acquit.

If I may repeat, what I have decided above is that, firstly, it is clear that the Committee has determined that TKK should be proceeded against under s 80; and secondly, it does not matter that the specific words set out in s 90(1)(c) are not expressly repeated in its reports. If I am wrong to hold that the Committee has decided that TKK should be disciplined under s 80 in respect of the two charges, and this point being obviously fundamental, I do not think it would be in order for the three remaining members of the Committee to reconvene and carry on where it left off and submit a report afresh or a supplementary report. A three-member committee, minus the chairman, is not a committee within the meaning of the Act. Mr Khoo relied on the case of *Marsland* v *Taggart*.[3] But that case is not quite on point. There a magistrate court consisting of three justices dismissed a complaint but agreed to state a case for the opinion of the High Court. Before the case was stated one of the justices died and the case was accordingly signed by only two justices. Hewart CJ held that it was proper so to do. One should note that in *Marsland*[3] there was already a decision to state a case.

However, if I am correct to say that the Committee has decided that action be taken against TKK under s 80 but am wrong to say that it does not matter that the Committee did not adopt the precise wording of s 90(1)(c), then I would follow *Marsland* and hold that the defect, being really a mere formality, can be put right by the remaining three members reconvening and submitting a supplementary report in proper terms.

If I am wrong on both the preceding two suppositions, then it must follow that the Chief Justice would have to be requested to appoint another person as the chairman. The question then would be whether it is in order for the new chairman, together with the remaining three members, to submit a fresh report or make a supplementary report based on the evidence already recorded. The difficulty here is that unless there is a complete rehearing, the new chairman would not have heard the evidence. There is authority to suggest that every member of a tribunal who participated in the decision must hear all the evidence: see *Ng* v *R*;[4] *Tan Boon Chee* v *Medical Council of Singapore*;[5] and *R* v *Huntingdon Confirming Authority*.[6] Further, under s 87(6) and (7) of the Act it is provided that, apart from the lay person on the disciplinary committee, all other members must be present at every meeting of the disciplinary committee. Accordingly, I would agree with the submission of Mr Lightman that there has to be a complete rehearing; and in that event justice would demand that not only should a new chairman be appointed, the other members of the disciplinary committee should also be changed, in order to prevent any possibility of prejudice: see the views of Lord Merriman, in *Munday* v *Munday*[7] at p 671 and *R* v *Kent Police Authority, ex p Godden*.[8]

Reverting to the application proper before me, I am of the view that the Committee has made its determinations in relation to the second and the third charges and there is no necessity to stay the order of court of 7 March 1988. Neither is there a need to make any order in relation to the other prayers.

Order accordingly.

Solicitors: *Michael Khoo & BB Ong; YH Cheong.*

Reported by *Liu Hern Kuan*

DBS Finance Ltd v Prime Realty Pte Ltd & Ors and other actions

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NOS 1167 OF 1989, 1231 OF 1989 AND 1232 OF 1989
KARTHIGESU J
20 DECEMBER 1990

Land Law — Mortgage — Caveats — Application by mortgagee bank that intending purchasers of properties from mortgagor withdraw caveats lodged against mortgaged properties — Position of mortgagee vis-a-vis intending purchasers of property from mortgagor — Promissory and proprietory estoppel, acquiescence and specific performance

The first defendants entered into sale and purchase agreements to purchase five pieces of property in a condominium development from Prime Developments Pte Ltd ('Prime Developments'). The first defendants mortgaged the five properties to the plaintiffs by executing deeds of assignment of the sale and purchase agreements and mortgages-in-escrow of the said properties. The other defendants in each of the originating summons were the intending purchasers of three of the five properties from the first defendants, with whom the first defendants had entered into contracts of sale and purchase ('sub-contracts') and who had each lodged caveats against the respective properties.

The first defendants defaulted in payment of the monthly instalments payable to the plaintiffs. Legal proceedings were commenced against the first defendants on 10 July 1986 but judgment was entered against the first defendants only on 2 March 1987. At the date of commencement of this action, the sale of the mortgaged properties from Prime Developments to the first defendants had not been completed and Prime Developments remained the registered subsidiary proprietors of the mortgaged properties.

The plaintiffs commenced this originating summons seeking declarations that, inter alia, they were entitled to exercise their mortgagees' powers over the mortgaged properties and that the other defendants withdraw the caveats lodged against the mortgaged properties.

The sub-contracts had been entered into without the prior consent of the plaintiffs, and the first defendants had collected option moneys from the other defendants pursuant thereto. There were some exchanges of correspondence between the plaintiffs and the defendants' solicitors after the execution of the sub-contracts whereby the plaintiffs became aware of the sub-contracts, and the plaintiffs had in a letter consented to the sub-contracts and required the first defendants to pay all moneys from the sub-sales of the properties to the plaintiffs immediately. The other defendants argued, inter alia, that the plaintiffs in so giving their consent had acquiesced to the sub-contracts. The deposit moneys were paid to the plaintiffs by the first defendants but the sub-contracts were not completed.

Held, allowing the application:

(1) The plaintiffs were entitled to exercise their mortgagees' powers over the mortgaged properties and the caveats should be withdrawn.

(2) Following the execution of the mortgage documents by the first defendants, the first defendants retained only the equity of redemption in each of the mortgaged properties. The legal title in the mortgaged properties remained vested in Prime Developments and the equitable interest of the first defendants in the mortgaged properties had been assigned to the plaintiffs on the execution of the mortgage documents. The first defendants could only contract to sell to the other defendants their equity of redemption in the mortgaged properties.

(3) The plaintiffs had an untrammelled power of sale over the mortgaged property which would override any contracts of sale entered into by the first defendants.

(4) The defendants could not succeed in their arguments relating to promissory estoppel and acquiescence unless they had an interest in land within the meaning of s 104(1) of the Land Titles Act (Cap 157, 1985 Ed) so as to entitle them to maintain the caveats. The first defendants were not the registered proprietors of the mortgaged properties and had assigned their equitable interest in the mortgaged properties to the plaintiffs. Therefore the sub-contracts could not pass an 'interest in the land' to the other defendants so as to entitle them to lodge caveats, and all that each of the other defendants had was a contractual right against the first defendants to transfer the statutory title in the mortgaged properties to them when the first defendants were legally able to do so. Neither could the other defendants have specifically enforced the sub-contracts against the first defendants, as a court of equity would not have granted specific performance to the other defendants before the first defendants had wholly or partially redeemed the mortgaged properties because such order of specific performance would have destroyed the plaintiffs' security over the mortgaged properties.

Cases referred to

1 *Ong Eng Bing & Anor* v *Indian Overseas Bank* [1983] 1 MLJ 193 (folld)
2 *City Developments Ltd* v *Goh Yoke Hian & Ors* [1990] 3 MLJ 8 (folld)
3 *Duke* v *Robson* [1973] 1 All ER 481 (folld)
4 *Catchpole* v *Burke* [1974] 1 NZLR 266 (refd)
5 *Central Trust & Safe Deposit Company* v *Harvey G Snider & Ors* [1916] 1 AC 266 (refd)
6 *United Overseas Finance Ltd* v *Mutu Jeras* [1989] 3 MLJ 20 (distd)
7 *Kerabee Park Pty Ltd* v *Daley* [1978] 2 NSWLR 222 (folld)

Legislation referred to

Conveyancing and Law of Property Act (Cap 61, 1985 Ed) s 26(1)
Land Titles Act (Cap 157, 1985 Ed) ss 37, 104(1)
Land Transfer Act 1952 [NZ] s 41
Law of Property Act 1925 [UK] s 104(1)